

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Mark Edward Wetsch,

Defendant.

Case No. 12-cr-45 (SRN/JJG)

**MEMORANDUM OPINION
AND ORDER**

Deidre Y. Aanstad and Kevin S. Ueland, United States Attorney's Office, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, for Plaintiff United States of America.

Mark Edward Wetsch, Sherburne County Jail, 13880 Business Center Drive NW, Elk River, Minnesota 55330, Pro Se.

Jordan S. Kushner, Law Office of Jordan S. Kushner, 431 South 7th Street, Suite 2446, Minneapolis, Minnesota 55415, Standby Counsel for Defendant.

SUSAN RICHARD NELSON, United States District Judge

This matter is before the Court on the Objections of Defendant Mark Edward Wetsch to the February 8, 2013, Report and Recommendation of Magistrate Judge Jeanne J. Graham. [Doc. No. 325.] Defendant moved to suppress evidence as a result of search and seizure [Doc. No. 47] and to suppress statements, admissions, and answers made at the Nicollet County Sheriff's Office and Sherburne County Jail. [Doc. No. 48.] The Magistrate Judge recommended denying Defendant's Motion to Suppress Evidence as a Result of Search and Seizure because: (1) the January 3, 2012, traffic stop of Defendant's vehicle was constitutional under Terry v. Ohio, 392 U.S. 1, 21 (1968); (2) Defendant freely and

voluntarily gave his consent to have his vehicle searched; and (3) the search warrants obtained by law enforcement to search Defendant's vehicle, home, DNA, and cellular telephone were supported by probable cause.¹ [Doc. No. 269.] The Magistrate Judge also recommended granting in part and denying in part Defendant's Motion to Suppress Statements, Admissions, and Answers. (*Id.*) The Magistrate Judge found that the statements made by Defendant approximately twenty-two minutes into his interview at the Nicollet County Sheriff's Office until he was transported to Sherburne County Jail should be suppressed, but that the remainder of Defendant's statements at the Nicollet County Sheriff's Office before his invocation of counsel and his statements made at Sherburne County Jail should not be suppressed. (*Id.*)

Defendant filed timely Objections to the Magistrate Judge's Report and Recommendation on March 28, 2013. [Doc. No. 325.] In his Objections, Defendant argues: (1) that St. Peter Police Department Detective Travis Sandland and Patrol Officer Lucas Belgard lacked reasonable suspicion to conduct a traffic stop of his vehicle on January 3, 2012; (2) that he did not provide Detective Sandland or Officer Belgard consent to search his vehicle; (3) that the search warrants issued were the result of an unlawful vehicle search and therefore any evidence uncovered is fruit of the poisonous tree; and (4) that Defendant's statements and admissions at the Nicollet County Sheriff's office and Sherburne County Jail were made without the benefit of counsel, in violation of the Fifth and Sixth Amendments.

¹ The Magistrate Judge also recommended that even if the Court were to find no probable cause existed for the search warrant of Defendant's car, the good-faith exception would apply. [Doc. No. 269].

The court reviews the report and recommendation of the magistrate judge de novo.

See 28 U.S.C. § 636(b)(1)(C); D. Minn. LR 72.2(b). Following a careful review of the file, record and proceedings herein, including but not limited to the August 27, 2012 hearing transcript before the Magistrate Judge and the exhibits the Court took into evidence at the hearing and the exhibits offered by Defendant after the hearing, the Court adopts the Magistrate Judge's recommendations in their entirety.

ORDER

Based on the foregoing and all of the files, records, and proceedings herein, the Court **OVERRULES** Defendant's Objections [Doc. No. 325] and **ADOPTS** the Magistrate Judge's Report and Recommendation [Doc. No. 269]. Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant's Motion to Suppress Evidence Obtained as a Result of Search and Seizure [Doc. No. 47] is **DENIED**; and
2. Defendant's Motion to Suppress Statements, Admissions, and Answers [Doc. No. 48] is **GRANTED IN PART AND DENIED IN PART**.

Dated: April 9, 2013

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge